

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEITH MURRAY,

Plaintiff,

-against-

08 Civ. 2160 (LAK)

UNITED PARCEL SERVICE OF AMERICA, INC., et al.,

Defendants.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

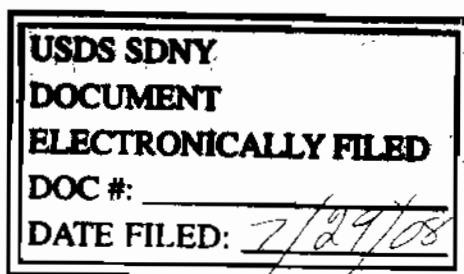
By motion dated July 9, 2008 (DI 28), defendants seek leave to amend the answer to assert a counterclaim. Plaintiff resists on the ground that the proposed counterclaim is insufficient in law and filed in bad faith.

While plaintiff does make a point of timeliness, the fact of the matter is that the proposed counterclaim is based on facts fully known to the defendants no later than February 2007. Issue was joined in this action on March 11, 2008. Defendants offer no excuse for the failure to have interposed the counterclaim at that time. In consequence, they have delayed unduly in seeking leave. Nevertheless, plaintiff does not rely upon that argument. The Court therefore will not deny leave on that ground.

A motion for leave to amend is not the ideal vehicle for litigating the sufficiency of a pleading. Accordingly, the motion for leave to amend is granted. The counterclaim is deemed interposed and served today. This order is without prejudice to any motion addressed to the sufficiency of the counterclaim that plaintiff may care to make.

SO ORDERED.

Dated: July 28, 2008



A handwritten signature in black ink, appearing to read "Lewis A. Kaplan".

Lewis A. Kaplan
United States District Judge